

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DANIEL HORACEK,

Plaintiff,

Case Number: 2:14-CV-13545
HON. LAWRENCE P. ZATKOFF

v.

DANIEL HEYNS, ET AL.,

Defendants.

/

ORDER REVOKING IN PART “ORDER WAIVING PREPAYMENT OF THE FILING FEE AND DIRECTING PERIODIC SUBSEQUENT PAYMENTS OF THE FILING FEE”

Michigan prisoner Daniel Horacek filed a *pro se* civil rights complaint under 42 U.S.C. § 1983. He also filed a Motion for Waiver of Fees and Costs. The Court issued an Order Waiving Prepayment of the Filing Fee and Directing Periodic Subsequent Payments of the Filing Fee. Now before the Court is Plaintiff’s objection to that Order [dkt. 9].

Title 28 U.S.C. § 1914(a) provides that “[t]he clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350. . . .” Plaintiff asserts that, under *Owens v. Keeling*, 461 F.3d 763 (6th Cir.2006), he was not “instituting” a suit pursuant to 28 U.S.C. § 1914(a). Instead, he argues he was refiling (after exhaustion of administrative remedies) a previously filed civil rights action that was dismissed on exhaustion grounds by the United States District Court for the Western District of Michigan. *See Horacek v. Heyns*, No. 2:13-cv-00280. In *Owens*, the Sixth Circuit Court of Appeals held that “when a prisoner ‘refiles’ a complaint raising the same prison-conditions claims as a complaint that was initially dismissed without prejudice for failure to exhaust under the [Prison Litigation Reform Act], the prisoner need not pay an additional filing fee

under 28 U.S.C. § 1914(a).” *Owens*, 461 F.3d at 773. The district court in *Owens* was directed to reimburse the plaintiff the fee he paid for the second, “refiled” complaint. *Id.*

The Court finds that this complaint is a refiling of the previously dismissed complaint. Plaintiff, therefore, is not required to pay an additional filing fee.

Accordingly, the Court HEREBY REVOKEs the portion of the Order Waiving Prepayment of the Filing Fee and Directing Periodic Subsequent Payments of the Filing Fee requiring Plaintiff to pay, in installments, the filing fee in this action. Plaintiff is not required to pay any portion of the filing fee. The Court directs the Clerk of Court to refund to Plaintiff any portion of the filing fee already collected.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
HON. LAWRENCE P. ZATKOFF
United States District Judge

Dated: December 5, 2014